Supreme Court, U.S.
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No. 99-1523

IN THE

# Supreme Court of the United States

U.S. *ex rel.* A-1 AMBULANCE SERVICE, INC.,

*Petitioner,*

*v.*

THE COUNTY OF LOS ANGELES, CALIFORNIA, *et al.*,

*Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

## REPLY BRIEF FOR PETITIONER

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Petitioner respectfully submits this Reply to the issues raised by respondents concerning original sources, and identity of issues in the procurements in Los Angeles and San Mateo.

1. Congressional Debate on "Original Source" Confirms the Requirement of Governmental Possession.

Respondents raised the issue of the Northern District court's ruling on "original source" to the detriment of their position. Opp. Brief at p. 7. Senator Grassley explained on the Senate floor that "sources" were persons who provided information *to the Government* or the media[1] *which was subsequently disclosed*:

> In the definition of "original source," the requirement that the individual "voluntarily" informed the Government or news media is meant to preclude the ability of an individual to sue under the qui tam section of the False Claims Act when his suit is based solely on public information and the individual was a source of the allegations only because the individual was subpoenaed to come forward. However, those persons who have been contacted or questioned by the Government or the news media and cooperated by providing

1. At the time, the relevant section of the proposed bill read "For purposes of this paragraph, 'original source' means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily informed the Government or the news media prior to an action filed by the Government." Cong. Rec. Senate, August 11, 1986 at p. 20531.

> information which later led to a public disclosure would be considered to have "voluntarily" informed the Government or media and therefore considered eligible qui tam relators." Remarks of Sen. Grassley, Cong. Rec. Senate August 11, 1986 at p. 20536.

This explanation makes it clear once again that Congress was only concerned with the public disclosure of Government information, which means that the Government must first possess some information to disclose.[2] While the court held that petitioner was not an original source of information, it did not identify who was. Respondents do not indicate that any of them would have been an appropriate alternate. Respondents continue to argue the rights of a non-existent party or of the attorney general, who has declined to pursue the matter.

2. The Issues Were Not Identical in the Northern District Case.

Respondents' claim that petitioners' issues were "exactly the same" against San Mateo County and in this action against Los Angeles County because A-1 Ambulance Service did not bid in either RFP also redounds to their detriment. Opp. Brief at p. 7, n.2. Respondents state that the "Petitioner never explains how it came to discover the alleged fraud in the present action if that discovery was not 'based upon' the

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2. The enacted version omitted "media": "(B) For purposes of this paragraph, "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the Government before filing an action under this section which is based on the information."

public disclosures made by Los Angeles County." Opp. Brief at p. 7. Petitioner is pleased to oblige.

One does not need to be a bidder to obtain relevant data. In the San Mateo Action, petitioners had the data from which they could analyze and determine the number of Medi-Cal and MIA patients on the one hand and the number of Medicare patients on the other which were projected to be transported by respondent Baystar. The analysis provided the projected revenue respondents expected to receive from each class of patients.[3] Petitioner Barrett filed a declaration in the Northern District which stated in relevant part:

> On March 8, 1994, I requested of Ms. Margaret Taylor, Director of Health Services, San Mateo County, copies of the 1990 Baystar Proposal; current ambulance prices and the current ambulance service contract. The Proposal contained cost and revenue projections.

On the other hand, petitioner alleged in this case on "information and belief" that the number of indigent and uncollectibles "may be estimated to be 25% of the transports." First Amended Complaint at paragraph 48. This was made necessary because respondent LA County had informed the public that no transcripts of their provider conferences would be available.

Moreover, as learned subsequently, Los Angeles County had received advice not to request from bidders an estimate of, *inter alia*, their own internal operating costs. "As

3. Neither San Mateo nor Baystar filed the projected profits and cost shifting information in their submissions to the Northern District Court.

discussed immediately below, it is unnecessary and unwise to request from bidders an estimate of their own internal operating costs." Declaration of Gary Izumi, Exhibit A, Addendum 2 to LA County RFP 1988, Bates number 264.

The missing data link concerning the number of indigents carried in LA County was not disclosed to petitioner by respondent Los Angeles County until *after* the filing of this action by the inclusion of Addendum 3 in its Motion to Dismiss as discussed in the Petition, *passim*.

3. Conclusion.

None of the respondents' arguments address how their interpretation of the public disclosure provisions advance the interests of the United States. For the foregoing reasons, and those stated in petitioner's opening brief, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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